

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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PLAINS PRODUCT TERMINALS LLC, :
 :
 Plaintiff, :
 :
 13 Civ. 7359 (RMB) (RLE)
 -against- :
 :
SOLUTIONS, ACQUISITIONS, LOGISTICS & :
TRAINING LLC, :
 :
 Defendant. :
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ORDER

I. Background

The substantive and procedural background of this case are set forth in the comprehensive report and recommendation of Magistrate Judge Ronald L. Ellis, dated June 26, 2015 (“Report and Recommendation”). The background includes the fact that Defendant Solutions, Acquisitions, Logistics & Training LLC failed to appear or otherwise respond to the Complaint, dated October 18, 2013.

Judge Ellis “recommend[s] that judgment be entered on behalf of [Plaintiff] Plains [Product Terminals LLC] in the amount of \$1,534,290.75, which includes \$1,140,750 in principal (for Defendant’s failure to pay three months of invoices at the contract price of \$380,250 per month) and \$393,540.75 in interest up to and including June 30, 2015, and additional interest be added at one and a half percent (1.5%) per month until entry of judgment.” (Report and Recommendation at 6.)

The Report and Recommendation advised that the “parties shall have fourteen (14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation,” and that “[f]ailure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States

Court of Appeals.” (*Id.*) To date, no party has filed objections to the Report and Recommendation.

For the reasons set forth below, the Court adopts the recommendations of the Report and Recommendation.¹

II. Legal Standard

The Court may adopt those portions of a magistrate judge’s report to which no objections have been made and which are not clearly erroneous. See Fed. R. Civ. P. 72(b); DeLeon v. Strack, 234 F.3d 84, 86-87 (2d Cir. 2000); Santana v. United States, 476 F. Supp. 2d 300, 302 (S.D.N.Y. 2007). A district judge “may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge.” 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b); DeLeon, 234 F.3d at 86-87.

III. Analysis

Having conducted a review of, among other documents and authorities, the Report and Recommendation, the Court concludes that the Report and Recommendation is not clearly erroneous and appears to be in conformity with the law in all respects.

Judge Ellis calculated the sums owed to the Plaintiff by Defendant as a result of Defendant’s breach of its contractual obligation to pay Plaintiff for three months’ worth of diesel fuel storage and Defendant’s failure to appear and defend this action.

Judge Ellis based his recommendations upon the Complaint, affidavits dated October 8, 2014 and October 29, 2014 submitted by Plaintiff’s counsel, Robert S. Levy, and the exhibits

¹ The Court has added \$18 to the total interest awarded to Plaintiff, which appears to be the result of a simple clerical error.

appended to those affidavits, this Court's Order, dated November 25, 2014, granting a default judgment against Defendant, and a damages inquest held by Judge Ellis on December 18, 2014.

In accordance with the Report and Recommendation, the Court concludes that Plaintiff is entitled to damages in the total amount of \$1,592,818.19, which includes \$1,140,750.00 in principal and \$452,068.19 in interest. The amount of interest is calculated by applying the 1.5% per month contractual interest rate from June 30, 2013 to the entry of judgment (October 13, 2015). (See Report and Recommendation at 6.)

IV. Conclusion

For the reasons stated herein, and therein, the Court adopts the Report and Recommendation [#26]. The Clerk of the Court is respectfully requested to enter judgment in favor of Plaintiff Plains Product Terminals LLC and against Defendant Solutions, Acquisitions, Logistics & Training LLC in the total amount of \$1,592,818.19, as follows: \$1,140,750.00 in unpaid principal; and \$452,068.19 for unpaid interest, calculated from June 30, 2013 to October 13, 2015.

The Clerk of Court is further requested to close this case.

Dated: New York, New York
October 13, 2015


RICHARD M. BERMAN, U.S.D.J.